

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

§

Case 4:18-cr-00575

Plaintiff,

§

v.

§

JACK STEPHEN PURSLEY,

§

Defendant.

§

DEFENDANT'S MOTION TO LIMIT THE DEPOSITION OF KERRY SMITH

TO THE HONORABLE COURT:

COMES NOW, JACK STEPHEN PURSLEY (“Defendant” or “Pursley”), by and through undersigned counsel, Michael Louis Minns and Ashley Blair Arnett, and files this Motion to Limit the Deposition of Kerry Smith.

On February 7, 2019, this court ordered Kerry Smith to supply and to give testimony before or ancillary to this Court including a deposition. ECF 70. On February 20, 2019, the Department of Justice Noticed the deposition of Kerry Smith pursuant to Federal Rule of Criminal Procedure 15(a)(1) and (b)(1). ECF 71.

The Government’s Notice is defective because it fails to comply with the Federal Rule of Civil Procedure 30(b) and 30(d). Depositions conducted under Federal Rule of Criminal Procedure 15 must be taken and filed in the same manner as a deposition in a civil action. *See* Fed. R. Crim. P. 15(e). The Government noticed Kerry Smith’s deposition for three consecutive days with no start time. Pursley doesn’t know if he should arrive at 6:00 AM or 1:00PM. The Federal Rules require a time and place to be listed in the notice and the rules limit the duration of the deposition to one day of seven hours. *See* Fed. R. Civ. P. 30(b) and 30(d).

The Government has informed the Defense that they are planning on having a videotape and audio recording of the deposition and then transcribing the deposition after they receive the audio and videotapes. Then after they get a transcript the Government plans to provide it to the Defense to review for any errors. This case is currently set for trial on June 18, 2019. The number of hours involved in transcribing a deposition after the fact and placing the responsibility on confirming the accuracy of that transcript on the defense on the eve of trial is unduly burdensome. The Government's reason that they cannot have a court reporter simultaneously take a transcript is that no court reporters reside on the Isle of Man. The Defense requests that this Court order the Government to hire a court reporter from a different country. Court reporters in Ireland and London advertise they specialize in conducting depositions overseas in accordance with the US rules governing depositions.

CONCLUSION

For the foregoing reasons Pursley respectfully requests that this Court grant the Motion to Limit the Deposition to a total of 3.5 hours per side, order the Government to disclose a start time, and order the Government to hire a court reporter to make a transcript of Kerry Smith's deposition simultaneously as the video recording.

Respectfully submitted on March 28, 2019

MINNS & ARNETT

/s/ Ashley Blair Arnett

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Attorneys for Jack Stephen Pursley

CERTIFICATE OF CONFERENCE

This is to certify that on March 28, 2019 a call was placed to Grace Albinson and the Government is opposed to the filing of this motion.

/s/ Ashley Blair Arnett
Ashley Blair Arnett

CERTIFICATE OF SERVICE

This is to certify that on this the 28th day of March 2019, a true and correct copy of the above and foregoing instrument was served upon all counsel of record.

/s/ Ashley Blair Arnett
Ashley Blair Arnett